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No. 84-822

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, A NATIONAL BANKING ASSOCIATION, WALTER E. HELLER INTERNATIONAL CORPORATION AND RONALD J. GRAYHECK,

Petitioners,

v.

HAROCO, INC., A CORPORATION, ROMAN CERAMICS, INC., A CORPORATION, CALIFORNIA ORIGINALS, INC., A CORPORATION, AND MIKE WAYNE DISTILLED PRODUCTS CO., A CORPORATION,

Respondents.

BRIEF FOR PETITIONERS

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QUESTION PRESENTED FOR REVIEW

Whether a civil claimant seeking treble damages under the Racketeer Influenced And Corrupt Organizations Act ("RICO") must suffer damages merely by reason of the defendant's commission of statutorily prescribed offenses, without more, or rather by reason of the defendant's acquiring, maintaining control or an interest in, or conducting the affairs of an "enterprise" through the commission of such offenses.

PARTIES TO THE ACTION

Petitioners are American National Bank and Trust Company of Chicago, Walter E. Heller International Corporation, now known as Amerifin Corporation, and Ronald J. Grayheck. Petitioners' corporate parents, subsidiaries and affiliates are contained in the Appendix To Petition For Writ Of Certiorari (App. A-70).[1]

Respondents are Haroco, Inc., Roman Ceramics, Inc., California Originals, Inc. and Mike Wayne Distilled Products Co.

1. "App." refers to the Appendix contained in Petitioners' Petition For Writ Of Certiorari.

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 747 F.2d 384 (7th Cir. 1984) and is reprinted in full in the Appendix to the Petition (App. A-1 to A-42). The opinion of the District Court is reported at 577 F. Supp. 111 (N.D. Ill. 1983).

JURISDICTION

The judgment of the Court of Appeals for the Seventh Circuit was entered on October 19, 1984. The Petition For Writ Of Certiorari was filed on November 21, 1984, and was granted on January 14, 1985. The jurisdiction of this Court rests on 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

All of the provisions of the Racketeer Influenced And Corrupt Organizations Act ("RICO"), Title IX of the Organized Crime Control Act of 1970, as amended, 18 U.S.C. §§1961-1968 are contained in the Appendix to the Petition (App. A-43 to A-56). Sections 1962 and 1964(c) are particularly germane.

Section 1962 provides:

> (a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce . . .
>
> (b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.
>
> (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

> (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b) or (c) of this section.

18 U.S.C. §1962.

Section 1964(c) provides:

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

18 U.S.C. §1964(c).

STATEMENT OF THE CASE

A. Summary Of The Claim[2]

American National Bank and Trust Company of Chicago ("ANB") is a national bank located in Chicago, Illinois, engaged in and whose activities affect interstate commerce. (App. A-58, ¶¶3, 4). It is in the general banking business, including the lending of money at contract interest rates. (App. A-58, ¶3). ANB is a wholly owned subsidiary of Walter E. Heller International Corporation ("Heller"), a publicly held company principally engaged in commercial banking, collateralized lending, mortgage banking, and a myriad of other financial services. (App. A-58, ¶5). Ronald J. Grayheck ("Grayheck") is one of ANB's officers and directors. (App. A-59, ¶6).

Respondents are related corporations which borrowed substantial sums from ANB. (App. A-59 to A-60, ¶¶10-14). In connection with those loans Respondents executed promissory notes, reciting that they agreed to pay ANB interest at a rate stated as an increment over ANB's prime rate. (App. A-59 to A-60, ¶¶10, 12, 14). The promissory notes signed by the Respondents defined "prime rate" as:

> The rate of interest charged by the bank to its largest and most creditworthy commercial borrowers for 90-day unsecured commercial loans.

(App. A-60, ¶14).

Respondents allege that ANB, acting through Grayheck and other ANB officers and employees, charged Respondents, and Respondents paid, interest rates in excess of what ANB

2. This summary is based on the Respondents' Amended Complaint, (App. A-57 to A-69) the factual allegations of which must be accepted as true because this case reaches this Court on review of an order granting Petitioners' Motion To Dismiss pursuant to Rule 12 of the Federal Rules of Civil Procedure. *See Miree* v. *DeKalb County, Ga.*, 433 U.S. 25, 27 n.2 (1977); *Jenkins* v. *McKeithen* 395 U.S. 411, 421 (1969). This Court need not, however, accept mere unsupported conclusions of fact or law.

represented in the promissory notes that it would charge. (App. A-60 to A-61, A-65, ¶¶16, 27). In other words, Respondents allege that ANB employed a method to calculate prime rate in a manner different than that contained in the promissory notes. (App. A-60 to A-61, ¶16).

B. The Proceedings Below

1. The District Court

In March of 1983, Respondents filed a complaint in the District Court for the Northern District of Illinois, seeking damages individually and as purported class representatives[3] of all others who borrowed from ANB pursuant to similar loan agreements with interest rates tied to ANB's prime rate. (App. A-62 to A-64, ¶¶21-23). The original complaint contained four counts and named ANB as the sole defendant. The only federal claim charged that ANB had violated RICO. ANB filed a Motion To Dismiss, contending, *inter alia*, that ANB could not be both the "enterprise" and "person" under Section 1962(c) of RICO.

In an attempt to cure the defects identified in Petitioners' Motion To Dismiss, Respondents filed an Amended Complaint. The Amended Complaint added Heller and Grayheck as defendants and expanded the original four-count complaint to five counts, including two alternative RICO counts, one against ANB and one against Heller and Grayheck. Specifically, in Count I Respondents charge ANB with violating RICO through multiple acts of mail fraud allegedly used to conduct either: (1) ANB's affairs; or (2) Heller's affairs. Count II alternatively charges Heller and Grayheck with violating RICO through multiple acts of mail fraud used to conduct ANB's affairs. The "mail fraud" in both counts refers to

3. Although the Respondents assert that their claims are appropriate for class certification pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, they did not seek certification of the purported class prior to the dismissal of their Amended Complaint.

ANB's use of the United States Postal Service for: (1) delivery of notices to its borrowers of changes in interest rates; and (2) receipt of borrowers' interest payments. (App. A-61, ¶16).[4]

Petitioners filed another Motion To Dismiss on the grounds that the Amended Complaint failed to state a claim upon which relief could be granted because: (1) the RICO counts failed to allege the required causal nexus between the alleged injury and a violation of Section 1962; (2) the RICO counts failed to appropriately allege the necessary "person/enterprise" relationship; (3) the RICO count against Heller and Grayheck failed to allege with sufficient particularity the claims of mail fraud in violation of Rule 9(b) of the Federal Rules of Civil Procedure; and (4) the pendent state law counts for breach of fiduciary duty and violation of the Illinois Consumer Fraud and Deceptive Business Practices Act failed to state legally sufficient claims under Illinois law.

On July 28, 1983, the District Court granted the Petitioners' Motion to Dismiss, holding that the Respondents' RICO claims in the Amended Complaint were fatally defective because "the only injuries the plaintiffs allege were direct consequences of instances of mail fraud and were not produced 'by reason of a violation of section 1962.' " 577 F. Supp. at 114-115. As a result, it did not find it necessary to address the remaining asserted deficiencies in the RICO claims. The District Court also dismissed the state claims since jurisdiction over those claims was based exclusively on their pendency to the RICO claims. *Id.*

4. The remaining three counts assert state law claims, allegedly pendent to the federal RICO claims. Count III alleges a breach of contract because the agreed upon interest rates were not used. (App. A-65 to A-66, ¶¶28-32). Count IV alleges that ANB's method of calculating interest on its loans violated the Illinois Consumer Fraud and Deceptive Business Practices Act, Ill. Rev. Stat. ch. 121 1/2, §262. (App. A-66 to A-67, ¶¶33-36). Count V alleges that ANB breached an asserted fiduciary duty owed to Respondents. (App. A-67 to A-69, ¶¶37-42).

2. The Court of Appeals

On October 19, 1984, the Court of Appeals for the Seventh Circuit reversed the District Court's decision on the issue of the type of injury which a civil RICO claimant must allege.[5] The Court of Appeals held that "a civil RICO plaintiff need not allege or prove an injury beyond any injury to business or property resulting from the underlying acts of racketeering," concluding that Respondents' allegations of injury from the allegedly excessive interest charges satisfy Section 1964(c). 747 F.2d at 398. (App. A-28).

In reaching its conclusion, the Seventh Circuit recognized that the injury required under Section 1964(c) has been one of the "most hotly disputed RICO issues" dividing the district courts. 747 F.2d at 387. (App. A-6 to A-7). Indeed, during the pendency of the appeal in this case, the Court of Appeals for the Second Circuit issued three decisions contrary to the position taken by the Seventh Circuit in this case. *Sedima, S.P.R.L.* v. *Imrex Co.*, 741 F.2d 482 (2d Cir. 1984), *cert. granted*, 53 U.S.L.W. 3506 (Jan. 14, 1985) (No. 84-648); *Bankers Trust Co.* v. *Rhoades*, 741 F.2d 511 (2d Cir. 1984), *petition for cert. filed*, 53 U.S.L.W. 3367 (U.S. Oct. 24, 1984) (No. 84-657); *Furman* v. *Cirrito*, 741 F.2d 524 (2d Cir. 1984), *petition for cert. filed, sub nom. Joel* v. *Cirrito*, 53 U.S.L.W. 3343 (U.S. Oct. 15, 1984) (No. 84-604) (commonly referred to as the "*Sedima* trilogy"). Further, shortly after the *Sedima* trilogy was decided and while the appeal in this case was still pending before the Seventh Circuit, the Eighth Circuit issued

5. The Court of Appeals affirmed the District Court's judgment with respect to the portion of Count I alleging that ANB conducted its own affairs through a pattern of racketeering activity. (App. A-42). Hence, the Seventh Circuit joined the Fourth and Ninth Circuits in holding that the same entity cannot be both the liable "person" and the "enterprise" under Section 1962(c). *See Rae* v. *Union Bank*, 725 F.2d 478 (9th Cir. 1984); *United States* v. *Computer Sciences Corp.*, 689 F.2d 1181 (4th Cir. 1982), *cert. denied*, 459 U.S. 1105 (1983). *Contra*, *United States* v. *Hartley*, 678 F.2d 961 (11th Cir. 1982). Count I was sustained, however, on the alternative claim alleged that ANB conducted Heller's affairs through a pattern of racketeering activity.

an opinion addressing the requisite injury in civil RICO claims. *Alexander Grant & Co.* v. *Tiffany Industries*, 742 F.2d 408 (8th Cir. 1984), *petition for cert. filed*, 53 U.S.L.W. 3541 (U.S. Jan. 2, 1985) (No. 84-1084).

In the final analysis, the Seventh Circuit concluded that, to require a RICO injury to be anything other than that injury which resulted from the underlying acts, would be an unjustified exercise in "aggressive jurisprudence." (App. A-30). That holding, however, effectively eliminated RICO's requirement that a civil claimant must have suffered an injury "by reason of a violation of section 1962." In its place the Seventh Circuit has substituted the insular requirement that a civil RICO claimant need only be injured by reason of one facet of the violation of Section 1962—i.e., the commission of two underlying predicate acts enumerated in Section 1961.

SUMMARY OF ARGUMENT

It is axiomatic that it is not the role of the judiciary to either expand or narrow the scope of any statute including civil RICO. Rather, that prerogative is a matter within the sole province of Congress.[6] Courts must refrain from venturing into the realm of policymaking by rewriting or editing statutes Congress has enacted, even if designed to improve upon them. The task of the judiciary is simply to construe what Congress' words mean.

That is not to say that statutory construction must occur in a vacuum without regard to the consequences of that construction. The difficulties in construing a statute, as Justice Frankfurter observed, "are inherent not only in the nature of words, of composition, and of legislation generally [but] are often intensified by the subject matter of an enactment."[7] Without question, RICO's subject matters—organized crime, the mafia, treble damages, criminal and civil forfeitures—have intensified lower courts' difficulties in its construction. Indeed, that task has evoked such an intense and diverse body of opinions with respect to its scope that the single common ingredient in the lower court opinions is the consistent reluctance to follow the plain meaning of the words. Instead, the decisions legislate by expanding or contracting the statutory scheme created by Congress.

The issue before this Court illustrates that dichotomy which pervades RICO decisions. On the one hand, the Seventh Circuit has effectively extended civil RICO to circumstances which are clearly beyond the plain meaning of the words of the statute and the intent of Congress. On the other

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6. Senator Strom Thurmond, chairman of the Senate Judiciary Committee, has announced his intention to conduct hearings this year on the "proliferation" of civil RICO suits. *See* Fed. Sec. L. Rep. (CCH) No. 1109 (January 23, 1985).

7. Frankfurter, *Some Reflections On The Reading of Statutes*, 47 Colum. L. Rev. 527, 528 (1947).

hand, in the *Sedima* trilogy, the Second Circuit has concluded the statute is ambiguous and rewritten civil RICO more restrictively than either the language or legislative history of the statute dictates.

In contrast to both, there is a middle ground which Petitioners espouse that neither expands nor narrows the scheme of RICO. That middle ground is totally consistent with both the language and the purpose of the statute, and does not lead to absurd judicial results. It is achieved by adhering to the fundamental guidepost of statutory construction — construing the plain meaning of the words. Within the context of this case, that meaning is readily discernible.

A claim for damages under RICO has two distinct elements. First, it must allege a violation of the substantive RICO statute, Section 1962, commonly referred to as "criminal RICO." Second, the civil plaintiff must allege the requisite injury under Section 1964(c), commonly called "RICO injury." The "RICO injury" requirement is satisfied only if the plaintiff was "injured in his business or property by reason of a violation of 1962." Thus, by definition, the second element can only be present if the plaintiff has adequately established a violation of Section 1962 since a "RICO injury" must flow from "a violation of section 1962".

Section 1962, or criminal RICO, has two separate and distinct facets: (1) a pattern of racketeering activity; (2) the use of that pattern to acquire, maintain or conduct an enterprise. Specifically, Respondents charge the Petitioners violated Section 1962(c) which prohibits the conduct of an enterprise's affairs through a pattern of racketeering activity. The mere commission of a pattern of racketeering activity, without the requisite use of that activity in relation to an enterprise, and no more, does not violate Section 1962(c).

The Seventh Circuit, however, disregarded whether Respondents, in fact, alleged conduct which constitutes a violation of Section 1962(c), and thus totally ignored the statutory mandate that the alleged injury result from "a violation

of section 1962." If the Seventh Circuit had heeded the meaning of Section 1962(c) and the conduct it prohibits, it would have concluded that the alleged wrongdoing here does not constitute a violation of Section 1962(c) which requires more than a simple breach of contract and mail fraud as Respondents allege in this case.

In contrast to the Seventh Circuit's approach, Petitioners' construction of the plain meaning of Section 1962(c) by using the statutory definitions and the usual and ordinary meaning of the undefined terms, produces a logical coherent result. A violation of Section 1962(c) occurs only when the offender commits the underlying racketeering offenses in connection with his managing or directing the course of the enterprise's affairs. Absent this critical nexus between the commission of the underlying predicate offenses and the management of the business, there is no violation of Section 1962(c).

The requirement of Section 1962(c) that the pattern of racketeering activity be integrally linked with the management and operation of the enterprise's affairs totally fulfills Congress' objectives in enacting RICO. The legislative history emphasizes, and this Court has previously recognized, that the primary purpose of RICO is to eradicate organized crime, by eliminating its economic power, especially through those criminal elements which have infiltrated legitimate businesses. Admittedly, Congress drafted the statute with sufficient breadth to encompass commercial fraud and include within its reach persons other than those belonging to criminal syndicates. Section 1962(c) is not, however, boundless. It was designed to address only circumstances in which the alleged racketeering activity is the means by which a person is conducting and directing the affairs of an enterprise, not to federalize conduct for which civil and criminal remedies were already available.

ARGUMENT

A. Section 1964(c) Requires An Injury "By Reason Of A Violation Of Section 1962"

The Seventh Circuit correctly began its "treasure hunt"[8] in search of the RICO injury with the language of the statute. Section 1964(c) expressly provides a private cause of action to:

> Any person injured in his business or property *by reason of a violation of section 1962* of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

18 U.S.C. §1964(c) (emphasis added). The Seventh Circuit aptly observed that, contrary to the position taken by the Second Circuit in *Sedima*, this language is not ambiguous and concluded that:

> As we read this "by reason of" language, it simply imposes a proximate cause requirement on plaintiffs. The criminal conduct in violation of Section 1962 must, directly or indirectly, have injured the plaintiff's business or property.

747 F.2d at 398 (App. A-28). Petitioners do not quarrel with this proximate cause analysis. The analysis fell short, however, because it misapprehended what constitutes "criminal conduct in violation of Section 1962." Petitioners submit that the injury must be causally related to the violation of Section 1962. The Seventh Circuit, however, held an injury related solely to the violation of the underlying predicate offenses is sufficient.

The "judicial gloss" added by the Seventh Circuit to the requisite causal nexus cannot be reconciled with the plain

8. 747 F.2d at 384 (App. A-4), *quoting Sutliff, Inc.* v. *Donovan Cos.*, 727 F.2d 648, 652 (7th Cir. 1984).

meaning of Section 1962 which unmistakably requires something more than the commission of the underlying predicate acts. The Seventh Circuit's definition of a "RICO injury" as an injury resulting "from the underlying acts of racketeering" (App. A-28) rewrites Section 1964 to require an injury "by reason of a violation of *section 1961*," not Section 1962. Although it reached an opposite conclusion, the Second Circuit's construction of Section 1964 in *Sedima* comes no closer to its plain meaning than that of the Seventh Circuit. The Second Circuit concludes that "the 'by reason of' language in section 1964(c) is intended to limit standing to those injured by a 'racketeering injury,' by an injury of the type RICO was designed to prevent." 741 F.2d at 495.

Looking only to the predicate acts in Section 1961 or to the "types of injury which the statute was designed to prevent," will not resolve the issue of whether a plaintiff has sustained a RICO injury. Rather, that question can only be answered by resolving the initial and paramount question of whether a violation of Section 1962 is alleged. When that task is accomplished, the determination of whether the alleged injury flowed from the violation is much less complex. Thus, attempts by the lower courts to define a RICO injury without first defining a "violation of section 1962" only beg the question. The resolution must lie in the meaning of "a violation of section 1962."

B. The Plain Meaning Of "A Violation Of Section 1962"

Construing Section 1962 is no more laborious or challenging than the process of construing any other statute. Subsections (a), (b) and (c) each require a "pattern of racketeering activity," further defined in the statute as mandating at least two acts of "racketeering activity." 18 U.S.C. §1961(5). "Racketeering activity", often referred to as the predicate acts, is defined to include any of a multitude of offenses enumerated in Section 1961(1). Mail fraud is among those offenses and the offense which Respondents claim Petitioners committed at least twice, and which constitutes a "pattern of racketeering activity." This, without more, is all

that the Seventh Circuit concluded is necessary to violate Section 1962 at least as that phrase is used in Section 1964.

The pattern of racketeering activity is, however, not all that Section 1962 proscribes. Each subsection makes unlawful a particular use of the pattern of racketeering in connection with an enterprise.[9] In other words, criminal RICO is violated only when the pattern of racketeering activity is used in one of the ways prohibited by Section 1962(a), (b), or (c). Section 1962 is simply incapable of any other interpretation if each word and clause is to be given effect. *See, e.g., Philbrook* v. *Glodgett*, 421 U.S. 707, 713 (1975) (in expounding a statute, the court must not be guided by a single word or sentence, but by the entire provisions of the law).

Confining a criminal RICO violation to nothing more than the commission of the pattern of racketeering activity cannot be reconciled with the congressional objectives which unquestionably focused on organized crime's infiltration of legitimate business and on divesting organized crime of the

9. "Enterprise" is yet another statutory concept, defined as "includ[ing] any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. §1961(4).

fruits of its ill-gotten gains.[10] Indeed, it would have made little sense to redundantly make unlawful the commission of two offenses, each of which was already unlawful under state or federal law.[11]

Economic penetration or infiltration of business achieved by criminal activities, then, is the crux of criminal RICO and it is that infiltration element which the subsections

10. Congress' focus on the economic impact of organized crime was explicit in its statement of findings:

> The Congress finds that (1) *organized crime* in the United States is a highly sophisticated, diversified, and widespread activity that *annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud and corruption*; (2) *organized crime derives a major portion of its power through money obtained from such illegal endeavors* as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitations; (3) *this money and power are increasingly used to infiltrate and corrupt legitimate business* and labor unions and to subvert and corrupt our democratic processes; (4) *organized crime activities* in the United States *weaken the stability of the Nation's economic system*, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

Pub. L. No. 91-452, 84 Stat. 947 (1970) (emphasis added).

11. The Department of Justice Guidelines for RICO recognizes that RICO violations consist of more than just the underlying offenses, and cautions government attorneys that "a RICO count which merely duplicates the elements of proof of a traditional Hobbs Act, Travel Act, mail fraud, wire fraud, gambling or controlled substances case, will not be added to an indictment unless it serves some special RICO purpose . . . " CCH Trade Reg. Rep. ¶50,452 (Sept. 6, 1983).

of Section 1962 are designed to prevent. Each subsection approaches the problem which Congress addressed from a specific and discrete perspective.

Section 1962(a) is aimed at infiltration by prohibiting the use of income derived from the racketeering activity or its proceeds. Specifically, it prohibits using or investing that income in: (1) the acquisition of an interest in an enterprise; (2) the establishment of an enterprise; or (3) the operation of an enterprise.

Section 1962(b) is aimed at infiltration by forbidding the use of the racketeering activity, itself, as opposed to any income received therefrom, to: (1) acquire any interest in or control of an enterprise; or (2) maintain any interest in or control of an enterprise.

Section 1962(c), the relevant section in this case, is likewise aimed at the unlawful use of a pattern of racketeering activity in connection with the conduct of an enterprise's affairs, providing as follows:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

The conduct proscribed by Section 1962(c), unlike that in Sections 1962(a) and (b), requires that the enterprise's actual affairs to be conducted through the use of the underlying criminal offenses. In contrast, the conduct proscribed by Sections 1962(a) and (b), does not require that the affairs of the enterprise have any connection with the underlying criminal

offenses so long as they serve as a vehicle to acquire an ownership interest or establish control in the enterprise.[12]

An integral relationship between the pattern of racketeering activity and the conduct of the enterprise's affairs, therefore, is essential to plead and prove a violation of Section 1962(c). The terms defining the prohibited relationship, "conduct" and "through," do not have statutory definitions. Accordingly, their usual and ordinary dictionary meanings must be used. *See, e.g., United States* v. *Rodgers*, ____ U.S. ____, 104 S.Ct. 1942, 1946 (1984); *Village of Hoffman Estates* v. *Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 503 (1982); *California Brewers Ass'n.* v. *Bryant*, 444 U.S. 598, 606 1980). "Conduct" means "to lead", "to direct the course of, manage, control" or "to have the direction of." Webster's Third New International Dictionary 474 (1971); American Heritage Dictionary 279 (1969). "Through" is defined as "by means of", or "from beginning to end; completely, thoroughly". Webster's Third New International Dictionary 2384 (1971); American Heritage Dictionary 1341 (1969). Using these definitions, Section 1962(c) prohibits a person associated with an enterprise to direct the course of or manage the affairs of the enterprise by means of the pattern of racketeering activity. More simply framed, a violation of Section 1962 occurs only when the racketeering activity is being used as an integral part of the enterprise's affairs.

In this case, there is no allegation and, indeed, there could not be, that Heller or Grayheck were directing or managing ANB's business through the overcharges of interest rates tied to prime rates. Similarly, Respondents do not and

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12. In fact, one of the Department of Justice's criticisms of the original bill, S. 1623, was that it was too narrow because it "merely prohibits the investment of prohibited funds in business, but fails to prohibit the control or operation of such a business by means of prohibited racketeering activities." *Hearings Before The Subcomm. On Criminal Laws & Procedures Of The Senate Comm. On The Judiciary*, 91st Cong. 1st Sess. 387 (1969). The plain meaning of subsection (c), added in a subsequent bill, specifically treats this criticism.

cannot allege that ANB manages Heller's affairs by virtue of its calculation of its prime rate. Rather, the alleged acts of racketeering are merely incidental to ANB's banking business. They are likewise even more incidental to Heller's ownership as a financial services company of its subsidiary ANB. Finally, the alleged acts of racketeering are not even alleged to be part of a scheme whereby Grayheck or Heller in the case of ANB, or ANB in the case of Heller, is controlling or managing the business.

If, indeed, Congress had meant to prohibit the mere occurrence of a pattern of racketeering activity within an enterprise, it could have done so. Instead, in keeping with its objective to eradicate the infiltration of legitimate business by organized crime, it prohibited the "conduct" of an enterprise's "affairs" "through" a pattern of racketeering activity. If a violation of Section 1962(c) does not require the pattern to be an inseparable part of the management of the business, "conduct," "affairs" and "through" are superfluous and the congressionally mandated parallel nature of the subsections of Section 1962 — each of which prohibits a particular use of the pattern of racketeering activity — is destroyed.

C. Congress' Intent Was Not Contrary To The Plain Meaning of Section 1962(c)

In the absence of "a clearly expressed" contrary legislative intent, unambiguous statutory language is conclusive. *Consumer Product Safety Commission* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). *See Russello* v. *United States*, ___ U.S. ___, 104 S.Ct. 296 (1983); *United States* v. *Turkette*, 452 U.S. 576, 580 (1981). *Accord* Frankfurter, *Some Reflections On The Reading Of Statutes*, 47 Colum. L. Rev. 527, 538 (1947), *quoting* Justice Holmes ("When Counsel talked of the intention of a legislature, I was discreet enough to say I don't care what their intention was. I only want to know what the words mean."). *See also Commissioner* v. *Gordon*, 391 U.S. 83, 93 (1968) ("a court is not free to disregard requirements simply because it considers them redundant or unsuited to achieving the general purpose in a

particular case."). Whether language is "ambiguous" can, of course, also be the subject of controversy. But regardless of whether Section 1962(c)'s language is ambiguous or unambiguous, the conclusion as to its meaning remains unchanged since it is totally consistent with the legislative history.

The purpose Congress sought to achieve when it enacted RICO has already been considered by this Court. *Russello* v. *United States*, ___ U.S. ___, 104 S.Ct. 296, 303 (1983); *United States* v. *Turkette*, 452 U.S. 576, 591 (1981). There is also a wealth of legal literature on the subject.[13] While differences of opinion may exist with respect to the precise scope of the statute, there is no disagreement that the primary purpose of RICO was to eliminate and prevent the "infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce." S. Rep. No. 617, 91st Cong. 1st Sess. 76 (1969). *Accord United States* v. *Turkette*, 452 U.S. 576, 591 (1981); *Russello* v. *United States*, ___ U.S. ___, 104 S.Ct. 296, 303 (1983). Similarly, although one can select isolated excerpts from the Congressional Record and the Senate and House Hearings and Reports to support a contrary position, an objective review of the legislative history demonstrates that Congress understood that RICO's reach extended beyond traditional criminal acts into the commercial arena. *See, e.g.*, 116 Cong. Rec. 35,205 (1970) (remarks of Congressman Mikva).

The legislative history is, however, almost barren with respect to the civil private cause of action Congress created. Moreover, it is totally void in regard to the requisite injury a civil claimant must have suffered as a prerequisite to invoking the treble damage provision. Virtually all of the debates and discussion relating to the civil

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13. *See, e.g., Blakey, The RICO Civil Fraud Action In Context: Reflections on Bennett* v. *Berg, 58 N.D. Law. 237 (1982)*; Bradley, *Racketeers, Congress, and the Courts: An Analysis of RICO*, 65 Iowa L. Rev. 837 (1980); McClellan, *The Organized Crime Act (S.30) or Its Critics: Which Threatens Civil Liberties? 46 N.D. Law. 55 (1970)*; Note, *RICO And Securities Fraud: A Workable Limitation*, 83 Colum. L. Rev 1513 (1983).

injunctive and forfeiture remedies and civil investigative demands available to the Attorney General. 18 U.S.C. §§1963, 1968.[14] The paucity of comment is a function of the fact that the original bill was introduced and passed by the Senate with no provision for a private right of action. *Hearings Before The Subcomm. on Criminal Laws & Procedures of the Senate Comm. on the Judiciary*, 91st Cong. 1st Sess. 4-104 (1969). Only after the American Bar Association urged it to do so did the House Judiciary Committee add the private right of action. That did not occur until August of 1970. S.30, 91st Cong. 2d Sess., 116 Cong. Rec. 35,295-96 (1970). But even with the ABA amendment to include what is now Section 1964(c), there was no specific debate or discussion articulating the scope of the private civil action. In fact, the speed with which Congress moved to enact the bill following the final amendment, apparently due to the 1970 election, was criticized. *See* 116 Cong. Rec. 35,210 (remarks of Congressman Conyers).

Notwithstanding the barren legislative slate on which this Court must write, the few comments directed to Section 1962(c) are totally compatible with the construction that adheres to the plain meaning of the words as Petitioners urge. For example, the provisions of the final version of the bill were characterized on the House floor as follows:

> The title prohibits the investment of funds derived from a pattern of racketeering activity or from the collection of an unlawful debt, where the investor participated as a principal, in a business engaged in interstate commerce. It also proscribes the acquisition, maintenance or control of any interest in a business engaged in commerce through a pattern of racketeering activity or the collection of

14. *See, e.g.*, 115 Cong. Rec. 6,993 (1969) (remarks of Senator Hruska who introduced S.1623, the predecessor to the bill which ultimately became RICO) ("[T]he criminal provisions are intended primarily as an adjunct to the civil provisions which I consider as the more important feature of the bill . . .").

> unlawful debts. *The conduct of the affairs of a business by a person acting in a managerial capacity, through racketeering activity is also proscribed.* Conspiracies to violate any of the provisions of the title also are made punishable.

116 Cong. Rec. 35,196 (Congressman Celler) (emphasis added).

The only other comments specifically addressed to the private treble damage remedy were those of Congressman Steiger who reported on his proposal to include certain procedural provisions for the civil cause of action:

> Authorization in title IX of the entire range of civil as well as criminal remedies, private as well as public, is very important to the effectiveness of the title. The value of private treble damage and equitable suits has been amply demonstrated in the antitrust field, where they have been extremely effective in preventing and rectifying economic harm to individuals and companies, and in furthering the public purpose of preventing improper commercial practices. *That entire gamut of civil remedies is still more important to title IX where corrupt and violent means are used to take over legitimate businesses*, than in the antitrust laws, where the unlawful means used are less reprehensive and seldom violent. There can be no reason not to provide the individuals harmed by title IX violations, as well as the general public, with the additional protection those further remedies would provide.

116 Cong. Rec. 35,227 (emphasis added).

Thus, what little legislative history that exists supports the construction asserted by Petitioners. The absence of a more definitive legislative history, moreover, does not relieve this Court of its judicial duty to accurately interpret the language of Congress in light of the evident legislative purpose. *See, e.g., United States* v. *Bornstein*, 423 U.S. 303 (1976);

Blue Chip Stamps v. *Manor Drug Stores*, 421 U.S. 723 (1975).

As noted, the one consistent theme that emerges from its legislative history confirms that RICO's private cause of action was aimed at eliminating the use of criminal conduct to infiltrate, take over, or manage business concerns — a purpose fully vindicated by the plain meaning of Section 1962(c). Congress expressly provided that RICO was not intended to usurp other available remedies for the commission of the underlying offenses. Those offenses represent only a part of a RICO violation. As Congress stated:

> [N]othing in this title shall supersede any provision of Federal or State law imposing criminal penalties or affording civil remedies in addition to those provided for in this title . . .

Pub. L. No. 91-452, 84 Stat. 947 (1970).

To construe the statute as criminalizing acts which are only incidental to an enterprise's affairs, and which are already unlawful under other federal and state statutes, dilutes the effect of what Congress was trying to achieve by enacting RICO.

D. RICO's Liberal Construction Clause Is Not Applicable To Section 1962

Mindful of the novelty of some of RICO's remedial provisions, notably those permitting civil forfeiture, Congress suggested a reading of the statute so that the "provisions of this title shall be liberally construed to effectuate its remedial purposes." 84 Stat. 947. This interpretative guideline does not, however, permit a court to sweep aside the plain meaning of the statute. Rather, such statutory rules of construction serve only to resolve ambiguities and have no relevance where the statutory language is clear. *See, e.g., Callanan* v. *United States*, 364 U.S. 587, 596 (1961); *United States* v. *Brown*, 333

U.S. 18, 25-26 (1948). *See also* 2A, 3 Sands, *Sutherland Statutory Construction*, §§58.05, 60.01 (4th ed. 1974) ("a legislative mandate to apply a liberal construction to an act will not justify the judicial creation of right or liabilities under the guise of 'construction.' "). Indeed, this Court in *Turkette* and *Russello* refused to consider the rule of "leniency" in construing provisions of RICO because the statute's language was clear. 452 U.S. at 587 n. 10; 104 S.Ct. at 297.

Even if Section 1962(c) were ambiguous, the liberal construction clause is not applicable to it. By its own terms, the clause dictates liberal construction only to "effectuate remedial purposes." It does not mandate that the substantive portion of RICO be liberally construed to determine what conduct constitutes a violation of Section 1962.[15] The "remedial purposes" of RICO consist of Sections 1964 and 1968, providing for civil injunctions, divestiture, private rights of action, and civil investigative demands, respectively.[16]

Section 1962, in contrast, is the controlling substantive provision of RICO, applicable to both the criminal and civil aspects. Thus, the limitation imposed by the Act on the liberal construction clause — "to effectuate its remedial purposes" — was obviously designed to avoid the serious constitutional questions posed if the liberal construction clause were applied to the criminal aspects of RICO.[17] This Court has repeatedly held that persons should not have to

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15. *See generally*, Tarlow, *RICO: The New Darling of the Prosecutor's Nursery*, 49 Fordham L. Rev. 165, 178 (1980).

16. Moreover, this Court has repeatedly stressed that the invocation of the "remedial purpose" of a statute will not justify construing a provision "more broadly than its language and the statutory scheme reasonably permit." *Touche Ross & Co.* v. *Redington*, 442 U.S. 560, 576 (1979); *Securities & Exchange Commission* v. *Sloan*, 436 U.S. 103, 116 (1978).

17. S. Rep. No. 617, 91st Cong. 1st Sess. 81 (1969) ("Nevertheless, it must be emphasized that these [civil] remedies are not exclusive, and that Title IX seeks essentially an economic, not a punitive goal. However remedies may be fashioned, it is necessary to free the channels of commerce from predatory activities, but there is no intent to visit punishment on any individual; the purpose is civil").

speculate as to what conduct is prohibited. *See, e.g., Dunn* v. *United States*, 442 U.S. 100, 112 (1979); *Bell* v. *United States*, 349 U.S. 81, 83 (1955); *Grayned* v. *City*, 408 U.S. 104, 108 (1972).

While this case like most civil RICO cases is not also an actual criminal case, the same words in Section 1962 cannot mean one thing for private litigants and another for federal prosecutors. *See Federal Communications Commission* v. *American Broadcasting Co.*, 347 U.S. 284, 296 (1954) (held that Section 1304 of the Communications Act would not be construed broadly for purposes of civil sanctions by the FCC since such a construction would also apply in criminal cases). Any hesitancy in construing a violation of Section 1962(c) to require a person to use the pattern of racketeering activity in connection with his management of the enterprise's affairs, as opposed to an incidental use, gives way to the Court's own doctrine which dictates a construction in favor of leniency to potential offenders. To find without more that the mere occurrence of two acts constituting defined offenses by a person associated with an enterprise violates Section 1962(c) deprives potential offenders of due process since they would be subject to the vagaries of a liberal construction.

E. There Are No Policy Considerations Requiring A Less Than Literal Reading Of Section 1962(c)

Although public policy reasons may occasionally stimulate the expansion of the plain meaning of a statute, *see Mohasco Corp.* v. *Silver*, 447 U.S. 807, 815, 833 (1980), none require more than a literal construction here. The Seventh Circuit's reading of RICO's terms more broadly than the language of the statute mandates is especially unsound since RICO was not created as a nostrum for every offense which might cause injury. Indeed, a host of remedies are available to

persons injured by the underlying racketeering acts enumerated in RICO.[18]

In effect, the Seventh Circuit decision authorizes a federal claim for treble damages in any private business dispute which involves two interstate telephone calls or two pieces of mail. If Congress had intended to sweep so broadly, it would have said so. *See, e.g., Russello* v. *United States*, ____ U.S. ____, 104 S.Ct. 296, 302 (1983). Similarly, the Seventh Circuit's comment that the interpretation of Section 1962(c) as urged by the Petitioners is "aggressive jurisprudence" which could only be justified "[i]f the safety or stability of the Republic demanded" 747 F.2d at 399. (App. A-30) ignores the devastating impact civil RICO cases have had on the federal courts' dockets.[19]

Petitioners do not suggest that the current and predictable flood of future civil RICO cases, which will clog currently overburdened district and even appellate federal courts with "garden-variety" fraud actions, is a sufficient reason to reverse the decision below. Nevertheless, the fact that Congress did not intend to federalize all disputes in which two writings were delivered by the mailman offers an additional

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18. In fact, a telling distinction in the language of Section 1964 compared to the language of Section 4 of the Clayton Act underscores the limited purpose of RICO. Section 4 of the Clayton Act provides that:

> Any person who shall be injured in his business or property by reason of *anything forbidden* in the antitrust laws may sue therefor . . .

15 U.S.C. §15 (emphasis added). Section 1964, although patterned on Section 4 of the Clayton Act, does not provide a private right of action for "anything forbidden" in RICO which would arguably include the predicate offenses listed in Section 1961 alone. Rather, it restricts the private action to only those injured by reason of a violation of Section 1962, not the catalogue of offenses recited in Section 1961.

19. *See* Sec. Reg. & L. Rep. (BNA) No. 16, at 539 (April 13, 1984). Although there are no precise statistics quantifying the flood of litigation that RICO has already created in the federal courts which would otherwise have been filed in the state courts, it will surely increase if RICO is expanded to include all common law fraud actions and many breach of contract claims such as in this case.

reason to adhere to the plain meaning of Section 1962(c). Moreover, adopting the plain meaning of Section 1962(c) does not reduce "RICO's civil provisions to a trivial remedy, available in only a tiny fraction of RICO violations" as the Seventh Circuit conjectured. 747 F.2d at 398. (App. A-27).[20]

Similarly, Petitioners do not adopt the position expressed in the *Sedima* trilogy. The Second Circuit's restriction of the statute to "an activity which RICO was designed to deter," further described in terms that require criminal convictions and links to "mobsters" or "organized crime," narrows as much as the Seventh Circuit expands. 741 F.2d at 495-496.

Rather, Petitioners submit that the approach which should be adopted in construing Sections 1964 and 1962(c) is to plumb their plain meaning. This approach fosters the goals Congress sought to achieve without needlessly burdening the federal courts and without imposing the harsh sanctions of RICO by applying it to activities it was never intended to encompass. The construction posited by the Petitioners, therefore, recognizes that Congress wanted to weave the "RICO net" with holes small enough to keep the "minions of organized crime"[21] from escaping, but not so small that even the minnows are caught. The best gauge of the mesh Congress intended comports with the plain meaning of the statute which should not be haphazardly enlarged or reduced by courts.

RICO injuries are recognizable in violations of Section 1962(c) if that provision is held to the plain meaning of

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20. See discussion of cases where actual RICO injuries were present *infra* at pages 27 to 29.

21. *Sutliff, Inc.* v. *Donovan Cos,* 727 F.2d 648, 654 (7th Cir. 1984) ("Congress deliberately cast the net of liability wide, being more concerned to avoid opening loopholes through which the minions of organized crime might crawl to freedom than to avoid making garden-variety frauds actionable in federal treble damage proceedings").

its terms.[22]In fact, there have been several cases which the Seventh Circuit implicitly recognized Section 1962(c) violations arising from a pattern of racketeering activity integrally permeating to the management of the enterprise's affairs.[23] For instance, in *Schacht* v. *Brown,* 711 F.2d 1343 (7th Cir.), *cert. denied,* 104 S.Ct. 508 (1983), defendants were charged with orchestrating a scheme to defraud the Director of Insurance through the operation of an insurance holding company by covering up the insolvency of one of its subsidiary companies. Consequently, the pattern of racketeering activity, which included deliberate overstatements of reserves, falsification of financial statements, fake reinsurance, and illegal dividends, provided the means by which the defendants directed the holding company-enterprise's affairs. Accordingly, the *Schacht* court aptly noted that:

> [I]t is ARC's operation in such a manner as to artificially prolong the operation of Reserve, not the mail fraud itself, which is separately underscored by the Director as the gravamen of the complaint . . . Thus, we find that the causal nexus as alleged easily satisfied the requirements of §1964(c).

711 F.2d at 1352.

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22. One of the most frequently voiced criticisms of courts and commentators opposed to requiring a "RICO injury" is that a RICO injury is not easily defined. *See, e.g., Laterza* v. *American Broadcasting Co.,* 581 F. Supp. 408, 414 (S.D. N.Y. 1984); *In re Catanella & E.F. Hutton & Co. Securities Litigation,* 583 F. Supp. 1388, 1437 (E.D. Pa. 1984); *Slattery* v. *Costello,* 586, F. Supp. 162, 167 (D.D.C. 1983).

23. It is therefore ironic that the court below questioned Petitioners' ability to offer a simple definition of "RICO injury" even though it candidly admitted that "it does not seem at all likely that Congress anticipated the application of civil RICO to improperly calculated interest rates by a commercial bank" 747 F.2d at 399. (App. A-29). The Seventh Circuit's attempt to shift the burden to Petitioners to define a RICO injury puts the shoe on the wrong foot. The burden of establishing that a statute's language should be construed to mean something other than the usual and plain meaning of the words used is on the party urging the adoption of an interpretation contrary to the plain meaning of its language. *Cf. Bread Political Action Committee* v. *Federal Election Committee,* 455 U.S. 577, 581 (1982).

Similarly, *Sutliff, Inc.* v. *Donovan Cos.*, 727 F.2d 648 (7th Cir. 1984) and *Bunker Ramo Corp.* v. *United Business Forms, Inc.*, 713 F.2d 1272 (7th Cir. 1983), involved pervasive fraudulent schemes which entailed each defendant's use of the underlying predicate acts of racketeering as an integral part of the enterprise's affairs. For example, in *Sutliff*, the fraud involved infiltrating the enterprise by stripping it of its funds and leaving its creditors with uncollectible accounts — i.e., a classic "bust-out." 727 F.2d at 651. Likewise, in *Bunker Ramo* the defendants created and managed an elaborate enterprise engaged in falsifying orders, invoices and delivery receipts, bribery and payment of goods never received. 713 F.2d at 1285-1286. The acts of racketeering were once again central to the operation of the enterprise. *Id.*

Significantly, *Sedima* has characteristics akin to those in *Sutliff* and *Bunker Ramo* — i.e., a mail fraud, which involved sending inflated costs and fraudulent invoices, was an indispensable factor in the defendant's management of the enterprise's affairs. In contrast, ANB's purported mail fraud, the mailing of notices of the changes in its announced prime rate, is neither central nor significant to the management of the bank's business.

"RICO injuries" therefore do emerge from the plain meaning of Section 1962 as illustrated by the injuries which were proximately caused by the violations of Section 1962 in *Schacht, Sutliff* and *Bunker Ramo*. In fact, in each of those cases, the Seventh Circuit without saying so endorsed the RICO injury test espoused here—an injury proximately

caused by a violation of 1962.[24] The flaw in the Seventh Circuit's analysis is this case occurred because it attempted to define the requisite RICO injury, as such, instead of the actual RICO violation. Moreover, the Seventh Circuit fell into the trap laid by the Second Circuit in assuming that a "meaningful distinction between injury from the predicate acts and injury from the pattern of racketeering activity" will always exist. 747 F.2d at 396-97.[25] (App. A-24).

Section 1964 does not, however, necessarily demand that the injury be different from an injury suffered by the underlying predicate acts. What it requires is an injury caused by a "violation of section 1962." Thus, if the RICO violation is established and it is determined that the plaintiff was injured by reason of the violation, a court need not draw a finer line and differentiate between the injuries caused by the underlying acts and those caused by the Section 1962 violation.[26]

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24. RICO injuries are, of course, not unique to the Seventh Circuit. *See, e.g., Alexander Grant & Co.* v. *Tiffany Industries*, 742 F.2d 408 (8th Cir. 1984), *petition for cert. filed*, 53 U.S.L.W. 3541 (U.S. Jan. 2, 1985) (No. 84-1084) (enterprise was conducted through a pervasive scheme of mail and wire fraud enabling it to remain in business and injure plaintiff which provided accounting services for a greater time than if the fraud had not occurred); *Bankers Trust Co.* v. *Rhoades*, 741 F.2d 511 (2d Cir. 1984), *petition for cert. filed*, 53 U.S.L.W. 3367 (U.S. Oct. 24, 1984) (No. 84-657) (over a nine year period enterprise conducted through bankruptcy fraud, frivolous litigation, bribery and corruption of state court judges); *Bennett* v. *Berg*, 685 F.2d 1053 (8th Cir. 1982), *modified en banc*, 710 F.2d 1361, *cert. denied*, 104 S.Ct. 527 (1983) (defendants' retirement community was fraudulently promoted with material misrepresentations and managed through the defendants' breaches of fiduciary duty and self-dealing).

25. *Sedima*, 741 F.2d at 496 ("plaintiff must always "show injury different *in kind* from that occurring as a result of the predicate acts themselves") (emphasis added). *See also Bankers Trust*, 741 F.2d at 516.

26. Indeed, this Court has recognized the elusiveness of the proximate cause test, stating that it is:

> virtually impossible to announce a black letter rule that will dictate the result in every case. Instead, previously decided cases identify factors that circumscribe and guide the exercise of judgment in deciding whether the law affords a remedy in specific circumstances.

Associated General Contractors v. *California Council of Carpenters*, ___U.S.___, 103 S. Ct. 897, 908 (1983).

CONCLUSION

There is no single definition of "RICO injuries." They are as numerous and as varied as the myriad predicate acts of Section 1961 and their requisite integration into violations of Section 1962. The absence of predictable harm, however, does not mean that a RICO injury is not required. If such a violation of Section 1962 is alleged, the requisite injury is present when and only if the plaintiff's injury was proximately caused by the violation, not the predicate acts which are but one component of the violation.

In this case Respondents have failed to allege anything more than predicate acts of mail fraud because ANB allegedly misrepresented its prime rate. Accordingly, the order of the Court of Appeals for the Seventh Circuit should be reversed and the District Court's order affirmed, dismissing the Respondent's Amended Complaint for failure to state a claim upon which relief can be granted.

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